

**IN THE UNITED STATE DISTRICT COURT
DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

vs.

Cause No.: 1:18-CV-01119 RB/LF

**AFSCME COUNCIL 18 and NEW
MEXICO HUMAN SERVICES
DEPARTMENT,**

Defendants.

**DEFENDANT NEW MEXICO HUMAN SERVICES DEPARTMENT’S ANSWER TO
PLAINTIFF’S COMPLAINT SEEKING DECLARATORY RELIEF, INJUNCTIVE
RELIEF, AND DAMAGES FOR DEPRIVATION OF FIRST AMENDMENT RIGHTS**

COMES NOW Defendant New Mexico Human Services Department (hereinafter “NMHSD”) by and through its Counsel of Record, Park & Associates, L.L.C. (Alfred A. Park and Lawrence M. Marcus) and for its Answer to Plaintiff’s Complaint Seeking Declaratory Relief, Injunctive Relief, and Damages for Deprivation of First Amendment Rights (hereinafter “Complaint”), states as follows:

INTRODUCTION

1. NMHSD states that the allegations in Paragraph 1 of Plaintiff’s Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of Plaintiff’s Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

2. NMHSD states that the allegations in Paragraph 2 of Plaintiff’s Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 2

of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

3. NMHSD denies that Plaintiff was coerced. As to the remaining allegations NMHSD states that the remaining allegations in Paragraph 3 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 1 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

4. NMHSD denies the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. NMHSD denies the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. NMHSD denies the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. NMHSD states that the allegations in Paragraph 7 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

PARTIES

8. NMHSD denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

10. NMHSD admits the allegations contained in Paragraph 10 of Plaintiff's Complaint.

JURISDICTION AND VENUE

11. NMHSD states that the allegations in Paragraph 11 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

12. NMHSD states that the allegations in Paragraph 12 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 12 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

FACTS

13. NMHSD denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

15. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 15 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

16. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 16 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

17. NMHSD denies the allegations contained in Paragraph 17 of Plaintiff's Complaint.

18. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 18 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

19. NMHSD denies the allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. NMHSD states that the allegations in Paragraph 20 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 20 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

21. NMHSD states that the allegations in Paragraph 21 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

22. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 22 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

23. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 23 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

24. NMHSD states that the allegations in Paragraph 24 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 24

of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

25. NMHSD states that the allegations in Paragraph 25 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 25 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

26. NMHSD states that the allegations in Paragraph 26 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 26 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

27. NMHSD states that the allegations in Paragraph 27 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 27 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

28. NMHSD states that the allegations in Paragraph 28 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 28 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

29. NMHSD denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

COUNT I

By refusing to allow Hendrickson to withdraw from the Union and continuing to deduct his dues, Defendants are violating his First Amendment rights to free speech and freedom of association.

30. NMHSD re-alleges and incorporates their answers to the previous paragraphs of the Complaint as though fully set forth.

31. NMHSD states that the allegations in Paragraph 31 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 31 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

32. NMHSD states that the allegations in Paragraph 32 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 32 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

33. NMHSD states that the allegations in Paragraph 33 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 33 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

34. NMHSD is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 34 of Plaintiff's Complaint and, placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

35. NMHSD states that the allegations in Paragraph 35 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information

or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 35 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

36. NMHSD states that the allegations in Paragraph 36 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 36 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

37. NMHSD denies the allegations contained in Paragraph 37 of Plaintiff's Complaint.

38. NMHSD denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. NMHSD states that the allegations in Paragraph 39 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 39 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

40. NMHSD denies the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41. NMHSD denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. NMHSD denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

COUNT II

The state law forcing Hendrickson to continue to associate with the Union without is affirmative consent violates Hendrickson's First Amendment rights to free speech and freedom of association and 42 U.S.C. § 1983.

43. NMHSD re-alleges and incorporates their answers to the previous paragraphs of the Complaint as though fully set forth.

44. NMHSD states that the allegations in Paragraph 44 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information

or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 44 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

45. NMHSD states that the allegations in Paragraph 45 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 45 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

46. NMHSD states that the allegations in Paragraph 46 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 46 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

47. NMHSD states that the allegations in Paragraph 47 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 47 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

48. NMHSD states that the allegations in Paragraph 48 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 48 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

49. NMHSD states that the allegations in Paragraph 49 of Plaintiff's Complaint contain overly broad legal conclusions rather than factual allegations and is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 49 of Plaintiff's Complaint. Placing their denial on that basis, this Defendant denies the same and demands strict proof thereof.

50. NMHSD denies the allegations contained in Paragraph 50 of Plaintiff's Complaint.

51. NMHSD denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

52. NMHSD denies the allegations contained in Paragraph 52 of Plaintiff's Complaint.

53. NMHSD denies the allegations contained in Paragraph 53 of Plaintiff's Complaint.

Defendant NMHSD denies any allegation not specifically admitted.

AFFIRMATIVE DEFENSES

Defendant New Mexico Human Services Department asserts the following separate and affirmative defenses in order to preserve them. Any affirmative defense for which no evidence has been adduced by the time of trial will be withdrawn:

- I. Plaintiff failed to state a claim for which relief can be granted.
- II. Plaintiff's claims are moot.
- III. Even if the subject incidents occurred as described in the Complaint, and even if Plaintiffs suffered some injury, none of Defendants' actions were the proximate or sole cause of the injuries and damages alleged.
- IV. If Defendants acted wrongfully, which is expressly denied, any injury to Plaintiff was caused in whole or in part by the wrongful conduct of person or entities other than Defendants, including that of Plaintiff himself, and any liability of Defendants, which is denied, must be wholly eliminated or reduced *pro rata*.

- V. Plaintiff's claims are barred by the Eleventh Amendment.
- VI. Defendants are protected by qualified immunity.
- VII. This Court lacks personal and subject matter jurisdiction.
- VIII. State claims are barred by the Tort Claims Act.
- IX. Plaintiff's claims are barred by Younger doctrine.
- X. Defendants acted in good faith at all times.
- XI. Defendant New Mexico Human Services Department reserves the right to supplement this Answer as discovery proceeds.

Defendant New Mexico Human Services Department reserves their right to assert additional affirmative defenses as these defenses become known.

WHEREFORE, having fully answered to Plaintiff's Complaint Seeking Declaratory Relief, Injunctive Relief, and Damages for Deprivation of First Amendment Rights, Defendant New Mexico Human Services Department prays that the Complaint be dismissed with prejudice, and that Defendant be awarded such other and further relief as this Court deems just and proper.

Respectfully Submitted,

PARK & ASSOCIATES, LLC

/s/ Lawrence M. Marcus
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I hereby certify a true and correct copy of the above pleading was served by electronic mail on this 22nd day of February 2019 to the following:

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/s/ Lawrence M. Marcus

Lawrence M. Marcus